We now come to the last class of cases to be considered, namely, where the plaintiff, though his day's work is done, is injured on his employer's premises. It appears to be settled that if he is on the premises on his own business as any stranger might be, as, for example, in crossing the tracks, or walking on them, he is not an employee. *Sullivan* v. *N. Y., N., H. & H. R. R. Co.* (1900) 73 Conn. 203. But it seems that if, in going to or from his work, it is necessary for him to pass over the premises owned or controlled by his master, he continues in the employment during that time. *Olsen* v. *Andrews* (1897) 168 Mass. 261; *Ewald* v. *Chicago & N. W. Ry. Co.* (1888) 70 Wis. 420.

This question is clearly presented by a recent case in the United States Circuit Court of Appeals. A servant assisting in the making of an excavation was sleeping in a tent near the work, when a piece of rock thrown by a blast, fell through the tent injuring him. It appeared that the plaintiff was boarded and lodged in the tent by the master, such board and lodging being received in part compensation for his services. At the time of the accident, the night shift to which he belonged was not at work. It was held that the fellow-servant doctrine had no application, inasmuch as at the time of the accident the plaintiff was not a fellow-servant of those to whom the master had delegated the duty of warning the plaintiff of blasts. *Orman* v. *Salvo* (C. C. A. 8th Circ. 1902) 117 Fed. 233.

An application of the rule stated in the beginning of the discussion, leads to a different conclusion from that reached by the court. For to say that a servant assumes all the risks incident to his contract, must in this case, include the use of the tent, which was part of the plaintiff's compensation. Nor can we apply the reasoning of the cases above cited, for, with one or two exceptions, there is an endeavor to find just how much the plaintiff assumed the risk. Where the accident happens while a right incident to the contract is being exercised, there is usually no recovery. The case illustrates the tendency of the courts to mitigate the harshness of the fellow-servant rule wherever possible. Various limitations have been placed on it in other classes of cases. Jurisdictions vary, but in the decisions we find limitations such as the application of the "vice-principal" theory, where the negligent servant is deemed to be doing a duty for his master, which the latter is not allowed to delegate, and where, consequently, the question of fellow-servants does not arise, *N. P. Ry. Co.* v. *Herbert* (1885) 116 U. S. 642; or, again, the "different department" theory, where the injured servant, not being in the same general class as the negligent one, is not deemed to be a a fellow-servant, *Ryan* v. *Chicago, etc., R. Co.* (1871) 60 Ill. 171; or where the master has chosen incompetent servants, *Evansville, etc. Ry. Co.* v. *Guyton* (1888) 115 Ind. 450; or where the negligent act is done by a superior servant, *Little Miami Ry Co.* v. *Stevens* (1851) 20 Ohio 416. It is also interesting, to note that many States have passed statutes, limiting the fellow-servant rule similar to the "Employer's Liability Act," first passed in England in 1880.

CANDIDATE'S NAME ON BALLOT MORE THAN ONCE.—Within recent years, the legislatures of several States have enacted laws declaring

that the name of a candidate for office shall be printed only once on the official ballot. If he be nominated by more than one political party, he shall indicate the party ticket on which he may prefer to appear, and a blank space shall be left under the title of the office on the other ticket. Minor provisions regulate any failure to make a choice between parties. Michigan, Laws 1895 Act No. 17; Ohio, 92 Ohio Laws 185 (1896); Wisconsin, Laws 1897 chap. 348 sec. 2. Such statutes had been uniformly held constitutional whenever the question had arisen until recently the highest court of California, by a vote of four to three, declared that a similar law enacted in California was illegal and void, as interfering with the rights of political parties and the rights of candidates. *Murphy et al.* v. *Curry* (1902) 70 Pac. 461. The California statute differed in requiring the words "No Nomination" in brevier capital type to be printed under the title of the office. Political Code of California Sec. 1197. But this difference did not affect the decision of the court.

The right to vote is given by the constitutions of the several States and in almost all of the States the constitution also prescribes the qualifications of electors. Cf 29 Am. L. Reg 872–920. Where the qualifications are so fixed the legislature has no power either to restrict, *Quinn* v. *State* (1871) 85 Ind. 485, or extend, *Spier* v. *Baker* (1898) 120 Cal. 376, the right of suffrage. But it is a well settled principle that the legislature has the power to establish regulations over the exercise of the constitutional right of suffrage, provided such regulations are reasonable, uniform and impartial, and do not unnecessarily impede the elective franchise. Cooley Const. Lim. 6th ed. 758. The legislature has the power even if not expressly granted in the State constitution. *Capen* v. *Foster* (1832) 12 Pick. 485. Under this power the legislatures of three-fourths of the States have enacted Australian Ballot Acts. These Acts in the course of time have gone more and more into detail as to the form of the ballot until now an official ballot has been generally adopted. Statutes prescribing the use of these official ballots have always been held constitutional provided they did not restrict the voter to the names printed on the ballot. *Dewalt* v. *Bartley* (1891) 146 Pa. St. 529. But to limit the size of the ballot it has been necessary for the legislatures to prescribe the requirements which must be complied with in order to entitle a political party or body of electors to have the name of its candidates printed upon the ballot. The chief qualification is that the party shall have polled a specified percentage of the vote in the preceding election, or that a body of electors of the required number make the nominations. This qualification has generally been considered constitutional. *Dewalt* v. *Bartley*, *supra*; *Ransom* v. *Black* (1892) 54 N. J. L. 446; *Minor* v. *Ollin* (1893) 159 Mass. 487. But the question has not been settled as yet in California. *Britton* v. *Board of Commissioners* (1900) 129 Cal. 348.

A statute prohibiting the printing of a candidate's name more than once on the ballot is only a further provision deemed necessary and reasonable by the legislature to regulate the form of the ballot. Whether the measure is wise or originates in partisan purposes is not for the courts to decide; they can declare the act unconstitutional only if it destroys or abridges some constitutional right. That the

statute does not do so the highest courts of Michigan, Ohio and Wisconsin have declared. *Todd* v. *Commissioners* (1895) 104 Mich. 474; *The State ex rel. Bateman* v. *Bode* (1896) 55 Ohio St. 224; *State* v. *Anderson* (1898) 100 Wis. 523. The rights of the voters, the rights of the candidates and the rights of the political parties have been considered. Each voter is entitled to an opportunity to vote and to reasonable facilities, but no State constitution guarantees that each voter shall have the same facilities with every other voter in expressing his will at the ballot box. A member of a regular political party may indicate his choice with one mark at the head of the ticket; but one who belongs to no party must write out a name for each office in the blank column. A statute does not violate the rights of an elector because he may be obliged to make two marks while another voter makes only one. *Todd* v. *Commrs*, *supra*. The opposite view was held in *Eaton* v. *Brown* (1892) 86 Cal. 375, where the court said of a similar provision that it was unconstitutional because it subjected some voters to a more inconvenient method of voting than others. This inconvenience, however, is only that experienced by everyone who votes other than a straight party ticket. If any inequality arises it arises not from any inequality caused by the statute but by reason of inequalities in the persons of the voters, and such inequalities are unavoidable. *State* v. *Bode*, *supra*.

In regard to the rights of candidates the California court confounds the right of a candidate to be voted for with a claim to have his name printed on the ballot. The statute does not declare that a candidate shall not be nominated or voted for by more than one political party, but that his name shall not be printed more than once on the official ballot. Appearance on the ballot is a privilege granted by the legislature and it treats all alike in limiting each candidate to one appearance.

The California court is the only court in the country which has recognized political parties as having constitutional rights. In *Britton* v. *Commissioners* (1900) 129 Cal 337 a primary election law was held unconstitutional in that it applied only to parties which polled three per cent. of the vote cast at the last election. If that court should follow its reasoning to a logical conclusion, as GARROUTE, J., argues in his dissenting opinion in the principal case, it would have to hold also unconstitutional the provision that parties polling less than a certain percentage of the votes cast at the last general election are not entitled to have their candidates go on the official ballot.

LIABILITY OF RECEIVER FOR RENT.—The decision in *Dayton Hydraulic Co.* v. *Felsenthal* (C. C. A. 6th Cir. 1902) 116 Fed. 961 follows a Federal rule which had its origin, it would seem, in a refusal to distinguish between the status of a chancery receiver and that of an assignee in bankruptcy. Under the English bankruptcy acts, the assignee in bankruptcy was allowed a reasonable time in which to elect whether he would adopt a given lease whereof the bankrupt was possessed, or, refusing to adopt it, throw it back as *damnosa hæreditas*.

In the latter event, and, also, during the continuance of the reasonable time allowed for his election, the assignee was under no liability